

beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

### § 40105. International negotiations, agreements, and obligations

(a) **ADVICE AND CONSULTATION.**—The Secretary of State shall advise the Administrator of the Federal Aviation Administration and the Secretaries of Transportation and Commerce, and consult with them as appropriate, about negotiations for an agreement with a government of a foreign country to establish or develop air navigation, including air routes and services. The Secretary of Transportation shall consult with the Secretary of State in carrying out this part to the extent this part is related to foreign air transportation.

(b) **ACTIONS OF SECRETARY AND ADMINISTRATOR.**—(1) In carrying out this part, the Secretary of Transportation and the Administrator—

(A) shall act consistently with obligations of the United States Government under an international agreement;

(B) shall consider applicable laws and requirements of a foreign country; and

(C) may not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

(2) This subsection does not apply to an agreement between an air carrier or an officer or representative of an air carrier and the government of a foreign country, if the Secretary of Transportation disapproves the agreement because it is not in the public interest. Section 40106(b)(2) of this title applies to this subsection.

(c) **CONSULTATION ON INTERNATIONAL AIR TRANSPORTATION POLICY.**—In carrying out section 40101(e) of this title, the Secretaries of State and Transportation, to the maximum extent practicable, shall consult on broad policy goals and individual negotiations with—

- (1) the Secretaries of Commerce and Defense;
- (2) airport operators;
- (3) scheduled air carriers;
- (4) charter air carriers;
- (5) airline labor;
- (6) consumer interest groups;
- (7) travel agents and tour organizers; and
- (8) other groups, institutions, and governmental authorities affected by international aviation policy.

(d) **CONGRESSIONAL OBSERVERS AT INTERNATIONAL AVIATION NEGOTIATIONS.**—The President shall grant to at least one representative of each House of Congress the privilege of attending international aviation negotiations as an observer if the privilege is requested in advance in writing.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1102.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40105(a) .....	49 App.:1462. 49 App.:1551(b)(1)(B). 49 App.:1655(c)(1).	Aug. 23, 1958, Pub. L. 85-726, §802, 72 Stat. 783. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(B); added Oct. 24, 1978, Pub. L. 95-504, §40(a), 92 Stat. 1745. Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.
40105(b) .....	49 App.:1502(a). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). 49 App.:1502(c).	Aug. 23, 1958, Pub. L. 85-726, §1102(a), 72 Stat. 797; Feb. 15, 1980, Pub. L. 96-192, §17, 94 Stat. 42. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704.
40105(c) .....	49 App.:1551(b)(1)(E). 49 App.:1502(d).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1102(c), (d); added Feb. 15, 1980, Pub. L. 96-192, §17, 94 Stat. 43.
40105(d) .....		

In subsection (a), the words “government of a foreign country” are substituted for “foreign governments” in 49 App.:1462 and “foreign country” in 49 App.:1502(a) for consistency in the revised title and with other titles of the United States Code. The words “Secretary of Transportation” are substituted for “Department of Transportation” in 49 App.:1551(b)(1)(B) because of 49:102(b). The words “Secretary of State” are substituted for “Department of State” because of 22:2651.

In subsection (b)(1), before clause (A), the words “carrying out” are substituted for “exercising and performing . . . powers and duties” for consistency in the revised title and with other titles of the Code. In clause (A), the words “an international agreement” are substituted for “any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries” for consistency and to eliminate unnecessary words. In clause (C), the word “public” is added for consistency in this part.

In subsection (b)(2), the words “obligation, duty, or liability arising out of a contract or other” and “herebefore or hereafter” are omitted as surplus. The words “government of a foreign country” are substituted for “foreign country” for consistency in the revised title and with other titles of the Code. The last sentence is inserted to inform the reader that section 40106(b)(2) of the revised title qualifies this subsection.

In subsection (c), before clause (1), the words “To assist” are omitted as surplus. The words “carrying out” are substituted for “developing and implementing” for consistency in the revised title and with other titles of the Code. The word “both” is omitted as surplus. In clause (8), the word “authorities” is substituted for “agencies” for consistency in the revised title and with other titles of the Code.

#### RECIPROCAL AIRWORTHINESS CERTIFICATION

Pub. L. 108-176, title VIII, §812, Dec. 12, 2003, 117 Stat. 2590, provided that:

“(a) **IN GENERAL.**—As part of their bilateral negotiations with foreign nations and their civil aviation counterparts, the Secretary of State and the Administrator of the Federal Aviation Administration shall facilitate the reciprocal airworthiness certification of aviation products.

“(b) **RECIPROCAL AIRWORTHINESS DEFINED.**—In this section, the term ‘reciprocal airworthiness certification of aviation products’ means that the regulatory authorities of each nation perform a similar review in certifying or validating the certification of aircraft and aircraft components of other nations.”

#### REPORT ON CERTAIN BILATERAL NEGOTIATIONS

Pub. L. 103-305, title V, §519, Aug. 23, 1994, 108 Stat. 1600, provided that: “The Secretary shall report every

other month to the Committee on Public Works and Transportation [now Committee on Transportation and Infrastructure] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of all active aviation bilateral and multilateral negotiations and informal government-to-government consultations with United States aviation trade partners.”

#### § 40106. Emergency powers

(a) **DEVIATIONS FROM REGULATIONS.**—Appropriate military authority may authorize aircraft of the armed forces of the United States to deviate from air traffic regulations prescribed under section 40103(b)(1) and (2) of this title when the authority decides the deviation is essential to the national defense because of a military emergency or urgent military necessity. The authority shall—

(1) give the Administrator of the Federal Aviation Administration prior notice of the deviation at the earliest practicable time; and

(2) to the extent time and circumstances allow, make every reasonable effort to consult with the Administrator and arrange for the deviation in advance on a mutually agreeable basis.

(b) **SUSPENSION OF AUTHORITY.**—(1) When the President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations or training of, or as a sanctuary for, or arms, aids, or abets, a terrorist organization that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of policy, the President may suspend the authority of—

(A) an air carrier or foreign air carrier to provide foreign air transportation to and from that foreign country;

(B) a person to operate aircraft in foreign air commerce to and from that foreign country;

(C) a foreign air carrier to provide foreign air transportation between the United States and another country that maintains air service with the foreign country; and

(D) a foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

(2) The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides is necessary to ensure the security of aircraft against unlawful seizure. Notwithstanding section 40105(b) of this title, the authority of the President to suspend rights under this subsection is a condition to a certificate of public convenience and necessity, air carrier operating certificate, foreign air carrier or foreign aircraft permit, or foreign air carrier operating specification issued by the Secretary of Transportation under this part.

(3) An air carrier or foreign air carrier may not provide foreign air transportation, and a person may not operate aircraft in foreign air commerce, in violation of a suspension of authority under this subsection.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1103.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
40106(a) .....	49 App.:1348(f). 49 App.:1655(c)(1).	Aug. 23, 1958, Pub. L. 85-726, §307(f), 72 Stat. 750. Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.
40106(b) .....	49 App.:1514. 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1114; added Aug. 5, 1974, Pub. L. 93-366, §106, 88 Stat. 413. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704.

In subsection (a), before clause (1), the words “armed forces” are substituted for “national defense forces” because of 10:101. The words “section 40103(b)(1) and (2) of this title” are substituted for “this subchapter” as being more precise. In clauses (1) and (2), the word “Administrator” in section 307(f) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 750) is retained on authority of 49:106(g). In clause (2), the words “fully” and “required” are omitted as surplus.

In subsection (b)(1), the words “government of a foreign country” are substituted for “foreign nation” for consistency in the revised title and with other titles of the Code. Before clause (A), the words “in a manner” and “in any way” are omitted as surplus. The word “authority” is substituted for “right” as being more precise and for consistency in the revised title.

In subsection (b)(2), the words “deemed to be” are omitted because a legal conclusion is being stated.

In subsection (b)(3), the words “by the President” are omitted as surplus.

#### AIRCRAFT PIRACY

The United States is a party to the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague, Dec. 16, 1970, entered into force as to the United States, Oct. 14, 1971, 22 UST 1641.

#### § 40107. Presidential transfers

(a) **GENERAL AUTHORITY.**—The President may transfer to the Administrator of the Federal Aviation Administration a duty, power, activity, or facility of a department, agency, or instrumentality of the executive branch of the United States Government, or an officer or unit of a department, agency, or instrumentality of the executive branch, related primarily to selecting, developing, testing, evaluating, establishing, operating, or maintaining a system, procedure, facility, or device for safe and efficient air navigation and air traffic control. In making a transfer, the President may transfer records and property and make officers and employees from the department, agency, instrumentality, or unit available to the Administrator.

(b) **DURING WAR.**—If war occurs, the President by executive order may transfer to the Secretary of Defense a duty, power, activity, or facility of the Administrator. In making the transfer, the President may transfer records, property, officers, and employees of the Administration to the Department of Defense.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1104.)